IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 237 of 2000

Decided on 05. 07 . 2007

State of H P .....Appellant

Versus

Parkash Chand ..... Respondents

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1] .

For the appellant : **Mr. V.K.Verma, Additional Advocate General.**

For the Respondent **Mr. Ajay Sharma, Advocate.**

Surinder Singh, J. *(oral)*

The respondent-accused was put on trial before the Additional Chief Judicial Magistrate, Amb, District Una (H.P.) in a case registered against him under Sections 420, 465, 468 and 471 of the Indian Penal Code. The respondent-accused was acquitted by the trial court, vide a detailed judgment passed on 28.6.1999 in Case No.33-II of 1998.

Against the impugned judgment, the instant appeal has been filed, on the grounds that

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

the trial court has not appreciated the evidence of the prosecution in its right perspective and further that the prosecution was not able to prove that the date of birth of the respondent was 19.4.1927 and not as alleged by him in his affidavit Ex.PW-8/A. Since the respondent has specifically alleged that he has passed his matriculation examination from the Punjab University in the year 1953 but he never explained this fact when examined under Section 313 Cr.P.C. Since the onus had been shifted on the respondent, he failed to prove it, therefore, the trial court ought not to have acquitted the respondent.

Leave to appeal was granted by this Court on 5.5.2000. Now the matter has been taken up for final hearing.

In short case of the prosecution against the respondent has been that:

while seeking the job as Pump Operator in the IPH Department of Himachal Pradesh, the respondent had disclosed his date of birth 19.4.1937 as against his actual date of birth 19.4.1927 i.e. ten years less than the original which was alleged to be wrong. The matter was

reported by Sh. Bishan Singh (now dead) the younger brother of the respondent to the SDO (IPH Department) Gagret with copies to the Chief Secretary, IPH, DIG (Vigilance), Superintending Engineer (IPH) and PWD.

A preliminary inquiry was conducted by the State Vigilance Department which *prima-facie* found the allegations made in the complaint were correct which culminated into registration of FIR No.102/96 dated 11.7.1996 (Ex.PW-11/A). The police took into possession the School Leaving Certificate Ex.PW-4/B, affidavit Ex.PW-8/A and medical fitness report Ex.PW-2/D = Ex.PW-7/A of the respondent. After recording statements of the witnesses, under Section 161 CrPC, the police presented a challan in the court for trial.

The prosecution has examined Diwan Chand SDO(IPH) (PW-1), Sansar Chand, Senior Clerk IPH (PW-2), Smt. Sita Devi (PW-3 = PW-6), Onkar Singh, CHT (PW-4), Ram Parkash Thakur (PW-5), who produced the School Admission Register, Shobha Rani (PW-7), Jai Singh (PW-8) the then Oath Commissioner, who had attested the affidavit Ex.PW-8/A, R.R. Bhatia, Dy.S.P.(PW-9) who was examined in lieu of Lakhu Ram

(IO) who had lost his vision, Jeet Singh ASI (PW-10), Chatur Singh (PW-11) and Gurdas Ram (PW-12).

The respondent was also examined under Section 313 Cr.P.C. the circumstances which were found attendant were put to him. His case was that of a denial simpliciter. According to him, his younger brother was under the influence of Pradhan with whom he nourished enmity. No defence was led.

After hearing the learned counsel for the parties and going through the evidence on record, the trial court acquitted the respondent precisely on the following grounds:

> Firstly, that Onkar Singh (PW-4) CHT had produced the record of admission of the School w.e.f. 24.10.32 to 14.4.54 but that record did not contain admission Form and complete file of admission of the respondent. Therefore, there was nothing on record to show, on which basis the date of birth of the respondent was shown as 19.04.1927. Secondly, according to Sita Devi (PW-6), who is alleged to have issued the certificate Ex.PW-4/B has stated in her cross-examination that the original

entry of date of birth was in *Urdu* language, which was got translated from an old man of village Gagret, who was not produced in the court. The witness did not know his name, even that Urdu record was neither taken into possession by the police nor produced in evidence in the court. Thirdly, the respondent had not tendered any school leaving certificate or any document qua his educational qualification at the time of getting the job except his affidavit Ex.PW-8/A. It was incumbent upon the prosecution to have collected the requisite record about the date of birth and educational qualification or could have enquired about it from the concerned Education Department i.e. from the Punjab University, as disclosed by the respondent in his affidavit Ex.PW-8/A, since its contents were also known to the Investigating Agency. Fourthly, the contention raised by the learned Public Prosecutor that the onus shifted to the respondent

> under Section 106 of the Indian Evidence Act to prove that his date of birth was 19.4.1937 and not 19.4.1927 was also not correct. It was for the Investigating Agency to collect the evidence qua the age of the respondent, which could not be termed either impossible or laborious task for them. Thus, the plea raised by the learned Public Prosecutor was rejected by giving detailed reasons.

I have re-appraised the evidence on record.

At the very outset, I would like to say that the onus to prove in a criminal case shifts on the accused, when the prosecution has been able to prove its case against him and the accused takes a specific defence or pleads an exception. In the instant case, in my considered opinion the prosecution has not been able to prove its case beyond the shadow of all reasonable doubt that the original date of birth was 19.4.1927 and not as claimed. The original record, which was made basis for admission of the respondent, was not produced though available in Urdu language with Education Department, so the material evidence was

suppressed; thus an adverse inference has to be drawn against the prosecution. There is nothing on record to show that the entry made in the School Leaving Certificate more specifically in view of the statement of Smt. Sita Devi (PW), was correct. Therefore, in these circumstances, the trial court had rightly come to the conclusion that the prosecution case against the respondent did not stand the judicial scrutiny. I concur with the judgment of acquittal recorded by the trial court. Accordingly, it cannot be said to be perverse as the view taken is based on record. Therefore, the instant appeal is dismissed. The respondent is discharged of the bail bonds, entered upon by him during the case of the trial, at any stage.

July 5, 2007 (Surinder Singh),J.
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